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MEETINGS OF THE STATES PARTIES
Fifth Meeting
Geneva, 29 November 1995

Letter dated 29 November 1995 from the Permanent Representative of the Federal Republic of Yugoslavia to the United Nations Office at Geneva addressed to the Chairman of the Fifth Meeting

Excellency,

I have the honour to transmit to you, in your capacity as Chairman, the text of an aide-memoire, dated 29 November 1995, of the Government of the Federal Republic of Yugoslavia concerning the participation of the Yugoslav delegation in the Fifth Meeting of the States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

I should be grateful if you would circulate the present letter and its annex to all States parties to the Convention, as an official document of the Fifth Meeting of the States parties.

(Signed) Vladimir Pavicevic
Ambassador

Annex

AIDE-MEMOIRE, DATED 29 NOVEMBER 1995, OF THE GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA

Since the adoption by the General Assembly of resolution 47/1 of 22 September 1992, some international organizations and specialized agencies, as well as some countries, have adopted or proposed arbitrary decisions in connection with the participation of the Federal Republic of Yugoslavia in the work of these organizations and specialized agencies.

Those decisions are totally unfounded and contrary to the letter and spirit of the above-mentioned resolution of the General Assembly, which pertains solely to non-participation of the Federal Republic of Yugoslavia in the work of the General Assembly. That was clearly confirmed by the opinion of the United Nations Legal Counsel (A/47/485 of 30 September 1992) that "the resolution neither terminates nor suspends Yugoslavia's membership in the organization" and it "does not take away the right of Yugoslavia to participate in the work of organs other than Assembly bodies".

The status of the Federal Republic of Yugoslavia as a full-fledged party to the international treaties signed by the former Socialist Federal Republic of Yugoslavia was explicitly confirmed by the legal opinion of the United Nations Under-Secretary-General for Legal Affairs, Mr. F. Zacklin, of 16 November 1993:

> "The status of Yugoslavia as a party to treaties was not affected by the adoption by the General Assembly of resolution 47/1 of 22 September 1992. By that resolution, the General Assembly decided that the Federal Republic of Yugoslavia (Serbia and Montenegro) shall not participate in the work of the General Assembly. It did not address Yugoslavia's status as a party to treaties."

It should be also noted that the Vienna Conventions on the Succession of States, accepted as the basis for the negotiations within the International Conference on the Former Yugoslavia, although they have not yet entered into force, envisage different rights and treatment of the predecessor State vis-à-vis newly-created States. They provide for the right of the predecessor State to continuity with respect to international treaties, regardless of the fact that the principles and norms applicable to the succession of State are also applicable to the division of assets and liabilities.

For its part, the Federal Republic of Yugoslavia has clearly stated, in the Declaration of the Federal Assembly adopted on 27 April 1992, that it will continue the State, international, legal and political personality of the former Socialist Federal Republic of Yugoslavia and that it will strictly abide by all international commitments undertaken by the Socialist Federal Republic of Yugoslavia.

The delegation of the Federal Republic of Yugoslavia regularly participates in the meetings of States parties to various international conventions.

At the Fifth Meeting of the States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, held on 29 November 1995, certain States parties sought to challenge Yugoslavia's right to participate in this Meeting.

The Government of the Federal Republic of Yugoslavia strongly considers that such action is totally unfounded, and therefore unacceptable, for the following reasons:

(a) It is inconsistent with the provisions of the Convention against Torture and the rules of procedures for the Meetings of the States parties;

(b) The status of the Federal Republic of Yugoslavia as a party to that Convention is not in any way affected by General Assembly resolution 47/1;

(c) The Federal Republic of Yugoslavia has clearly expressed its readiness to abide fully by the commitments arising from the Convention against Torture;

(d) The delegation of the Federal Republic of Yugoslavia was officially invited to take part in the Meeting of States parties, for which it has duly submitted full powers.

The Government of the Federal Republic of Yugoslavia wishes to draw the attention of the States parties to the Convention against Torture that such legally unfounded and politically motivated action by certain States parties may set a dangerous precedent with respect to the status of the States parties to the Convention and create serious obstacles to its implementation. The fact that such a proposal is being made now, in the aftermath of the Dayton Peace Agreement, is an even greater danger.

It should be understood that the denial to the Federal Republic of Yugoslavia of the legitimate right to participate in the Meeting of States parties would at the same time imply the suspension of its obligations arising from the Convention. This would therefore mean that Yugoslavia would no longer be obliged to implement the provisions of the Convention.

The Government of the Federal Republic of Yugoslavia wishes to state that it is fully prepared to honour all its obligations as a State party to this Convention and to participate in that capacity in the Meetings of the States parties.

Any decision to the contrary shall be the sole responsibility of those States parties which initiated and supported such action.

The Convention against Torture is in a specific category of treaties valid erga omnes, with the primary goal of protecting human beings against all forms of torture. Such a decision would be in total contradiction with this noble goal, as it discriminates against a State party that has demonstrated readiness or resolve to honour and implement the Convention.